



Analysis of Original Bill

Author: Fong	Sponsor:	Bill Number: AB 2039
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Attorney: Bruce Langston	Related Bills: See Legislative History	

Subject: California Achieving a Better Life Experience (CalABLE) Contributions Deduction

Summary

This bill would under the Personal Income Tax Law (PITL), allow a deduction in computing adjusted gross income in an amount equal to the amount contributed to a CalABLE account during the taxable year.

Recommendation – No position.

Reason for the Bill

The reason for the bill is to offer incentives so that both California residents and out-of-state residents will contribute to the well-being of one of our state's most vulnerable populations.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2018.

Program Background

In 2015, Governor Brown signed the California ABLE Act into law,¹ which allows qualified individuals with disabilities and their families to open tax-free savings accounts without the worry of losing vital government assistance.

Contributions to a CalABLE account, currently limited to \$15,000 per year, can be made by family, friends, or the beneficiary themselves. The account's earnings are allowed to accumulate tax-free, and the withdrawals, provided they are applied to qualifying disability expenses, are tax-free.

¹ AB 449 (Irwin, Chapter 774, Statutes of 2015).

Federal Law

Existing federal and state laws allow for the deduction of certain expenses when calculating adjusted gross income, such as moving expenses and interest on education loans (also known as student loans). Thus, all taxpayers with this type of expense receive the benefit of the deduction. These are known as “above-the-line” deductions.²

Qualified ABLE Programs

The ABLE Act of 2014³ created a new type of tax-favored savings program for taxable years beginning on or after January 1, 2015, known as a qualified ABLE program. Qualified ABLE programs are established and maintained by a state or agency or instrumentality and must meet the following conditions: (1) under the provisions of the program, contributions may be made by any person to an account (an “ABLE account”), established for the purpose of meeting the qualified disability expenses of the designated beneficiary that is an eligible individual, as defined, of the ABLE account; (2) the program must limit a designated beneficiary to one ABLE account; (3) the program must allow for the establishment of ABLE accounts only for a designated beneficiary who is a United States resident; and (4) the program must meet certain other requirements discussed below. A qualified ABLE program is generally exempt from income tax, but is otherwise subject to the taxes imposed on the unrelated business income of tax-exempt organizations.

Contributions to an ABLE account must be made in cash, are subject to specified limitations and are not deductible for federal income tax purposes.

State Law

For both personal and corporate income taxpayers, California generally conforms to the federal tax treatment of ABLE accounts,⁴ except that any distribution that is includible in state income is subject to an additional state tax penalty of 2.5 percent and reports required to be sent to the Secretary of the Treasurer must also be sent to the Franchise Tax Board.

This Bill

This bill would for taxable years beginning on or after January 1, 2018, allow contributions made during the taxable year by a taxpayer subject to the PITL to a CalABLE account established pursuant to Chapter 15 (commencing with Section 4875) of Division 4.5 of the Welfare and Institutions Code to be deducted in computing an individual’s California adjusted gross income.

² Other “above-the-line” deductions include certain ordinary and necessary trade and business expenses, losses from the sale or exchange of certain property, contributions for pension, profit-sharing and annuity plans of self-employed individuals, retirement savings, and alimony.

³ Section 102 of Division B of Public Law 113-295, codified at Internal Revenue Code (IRC) section 529A.

⁴ Revenue & Taxation Code sections 17140.4 and 23711.4.

Implementation Considerations

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

Because the bill fails to specify otherwise, an individual that contributed to multiple CalABLE accounts would be allowed a deduction for 100 percent of their contributions. If this is contrary to the author's intent, this bill should be amended.

The deduction would be limited to individuals although contributions to a CalABLE account may be made by any person, includes business entities as well as individuals. If the author intends to provide a tax benefit to all CalABLE contributors, this bill should be amended.

If this bill is enacted in late September or October of 2018, the department would have developed the tax forms and instructions for the 2018 taxable year. Thus, the department may incur additional costs to develop alternative forms and instructions in the short time frame necessary to ensure they are available for taxpayers to comply with the updated filing requirements as a result of this bill. The author may wish to amend the bill to be operative for taxable years beginning on or after January 1, 2019.

Legislative History

SB 324 (Pavely, Chapter 15, Statutes of 2015) generally conformed state tax law to the federal tax treatment of ABLE accounts.

AB 449 (Irwin, Chapter 774, Statutes of 2015) established the CalABLE program.

Other States' Information

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. A review of these states' laws found that all have established ABLE programs in their state; none allow a deduction for contributions as proposed by this bill.

Fiscal Impact

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2039 as Introduced February 6, 2018.
For Taxable Years Beginning On or After January 1, 2018.
Assumed Enactment after June 30, 2018, (\$ in Millions)

Fiscal Year	Revenue
2018-2019	- \$5.2
2019-2020	- \$4.9
2020-2021	- \$6.1

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

CalABLE accounts are not currently available, however the California Treasurer has prepared projections using assumed contributions and income growth. Based on the California Treasurer's CalABLE projections, it is assumed that \$33 million will be contributed to CalABLE accounts in 2018. By 2024, the amount of contributions will grow to approximately \$75 million at which point the California Treasurer projects contributions to level off. According to the Government Accountability Office, individuals who set up IRC section 529 accounts are significantly wealthier than other individuals. Using an average tax rate of 9 percent results in an estimate revenue loss of \$3 million in 2018, and \$6.9 million in 2024. It is assumed that taxpayers would continue to contribute to CalABLE accounts over their lifetime.

The tax-year estimates are converted to fiscal years, and then rounded to arrive at the amounts reflected in the above table.

Support/Opposition

Support: None Provided.

Opposition: None Provided.

Arguments

Proponents: Some may argue that allowing a depositor to deduct their contributions to a CalABLE account would encourage more contributions and increase the beneficiary's financial situation, thereby reducing the need for governmental services provided by the general fund.

Opponents: Some may argue that allowing a deduction for contributions to CalABLE accounts would reduce the general fund revenues needed to provide services to the very people the CalABLE accounts are intended to benefit.

Policy Concerns

This bill would potentially provide a double tax benefit for the funds contributed by allowing an above-the-line deduction for contributions to CalABLE accounts made by an individual, effectively excluding such contributions from state tax in addition to the current law exclusion from gross income for distributions for qualified disability expenses for a designated beneficiary.

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